

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Case#: 07 CV 6491 (WHP)

CHLOE, S.A.S., J. CHOO LIMITED,

Plaintiff,

- against -

**AMENDED ANSWER TO
AMENDED COMPLAINT**

KEN CHEN a/k/a SHU CHEN et.al.,

Defendant.

-----X

Defendant, Howard Shipping Express a/k/a Howard Shipping Express Inc. ("Howard"), by its attorney Andrew Squire, as and for its answer to plaintiff's Amended Complaint, alleges as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "1" of the Amended Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "2" of the Amended Complaint.
3. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "3" of the Amended Complaint.
4. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "4" of the Amended Complaint.
5. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "5" of the Amended Complaint.
6. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "6" of the Amended Complaint.
7. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "7" of the Amended Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "8" of the Amended Complaint.
9. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "9" of the Amended Complaint.
10. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "10" of the Amended Complaint.
11. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "11" of the Amended Complaint.
12. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "12" of the Amended Complaint.
13. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "13" of the Amended Complaint.
14. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "14" of the Amended Complaint.
15. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "15" of the Amended Complaint.
16. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "16" of the Amended Complaint.
17. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "17" of the Amended Complaint.
18. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "18" of the Amended Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "19" of the Amended Complaint.
20. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "20" of the Amended Complaint.
21. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "21" of the Amended Complaint.
22. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "22" of the Amended Complaint.
23. Admits each and every allegation contained in paragraph "23" of the Amended Complaint.
24. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "24" of the Amended Complaint.
25. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "25" of the Amended Complaint.
26. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "26" of the Amended Complaint.
27. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "27" of the Amended Complaint.
28. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "28" of the Amended Complaint.
29. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "29" of the Amended Complaint.

30. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "30" of the Amended Complaint.
31. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "31" of the Amended Complaint.
32. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "32" of the Amended Complaint.
33. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "33" of the Amended Complaint.
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41. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "41" of the Amended Complaint.
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51. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "51" of the Amended Complaint.

52. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "52" of the Amended Complaint.
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59. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "59" of the Amended Complaint.
60. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "60" of the Amended Complaint.
61. Admits each and every allegation contained in paragraph "61" of the Amended Complaint.
62. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "62" of the Amended Complaint and respectfully refers the court to the documents and/or statutes referred to in paragraph "62" of the Amended Complaint for a complete and accurate statement of its contents.

63. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "63" of the Amended Complaint and respectfully refers the court to the documents and/or statutes referred to in paragraph "63" of the Amended Complaint for a complete and accurate statement of its contents.
64. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "64" of the Amended Complaint and respectfully refers the court to the documents and/or statutes referred to in paragraph "64" of the Amended Complaint for a complete and accurate statement of its contents.
65. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "65" of the Amended Complaint and respectfully refers the court to the documents and/or statutes referred to in paragraph "65" of the Amended Complaint for a complete and accurate statement of its contents.
66. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "66 of the Amended Complaint.
67. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "67 of the Amended Complaint.
68. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "68 of the Amended Complaint.
69. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "69 of the Amended Complaint.
70. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "70"of the Amended Complaint.
71. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "71"of the Amended Complaint.

72. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "72" of the Amended Complaint.
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82. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "82" of the Amended Complaint.

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89. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "89" of the Amended Complaint.
90. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "90" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
91. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "91" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
92. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "92" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.

93. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "93" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
94. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "94" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
95. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "95" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
96. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "96" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
97. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "97" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
98. Repeats and realleges each and every answer to each and every allegation referred to in paragraph "98" of the Amended Complaint.
99. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "99" of the Amended Complaint.
100. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "100" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
101. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "101" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.

102. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "102" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
103. Repeats and realleges each and every answer to each and every allegation referred to in paragraph "103" of the Amended Complaint.
104. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "104" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
105. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "105" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
106. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "106" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
107. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "107" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
108. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "108" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
109. Repeats and realleges each and every answer to each and every allegation referred to in paragraph "109" of the Amended Complaint.
110. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "110" of the Amended Complaint.

111. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "111" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
112. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "112" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
113. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "113" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
114. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "114" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
115. Repeats and realleges each and every answer to each and every allegation referred to in paragraph "115" of the Amended Complaint.
116. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "116" of the Amended Complaint.
117. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "117" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
118. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "118" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
119. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "119" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.

120. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "120" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
121. Repeats and realleges each and every answer to each and every allegation referred to in paragraph "121" of the Amended Complaint.
122. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "122" of the Amended Complaint.
123. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "123" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
124. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "124" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
125. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "125" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
126. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "126" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
127. Repeats and realleges each and every answer to each and every allegation referred to in paragraph "127" of the Amended Complaint.
128. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "128" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.

- 129. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "129" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
- 130. Repeats and realleges each and every answer to each and every allegation referred to in paragraph "130" of the Amended Complaint.
- 131. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "131" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
- 132. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "132" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
- 133. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "133" of the Amended Complaint except denies each and every said allegation with respect to defendant Howard Shipping Express Inc.
- 134. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph "134" of the Amended Complaint.

As and for a First Affirmative Defense

- 135. Howard Shipping Express Inc. does not manufacture, store, sell nor distribute any products whatsoever, and, as such, the Complaint fails to state a cause of action as against the answering defendant Howard Shipping Express Inc.

As and for a Second Affirmative Defense

- 136. Plaintiff's marks and goodwill of the business associated with them are not distinctive.

As and for a Third Affirmative Defense

- 137. Howard Shipping Express Inc. does not have the knowledge of plaintiff's marks.

As and for a Fourth Affirmative Defense

138. Howard Shipping Express Inc. never intended to use the alleged similarity between plaintiffs and their products to cause confusion, or to cause mistake, or to deceive.

As and for a Fifth Affirmative Defense

139. Howard Shipping Express Inc.'s work, labor and shipping services are not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of defendant with plaintiff.

As and for a Sixth Affirmative Defense

140. Howard Shipping Express Inc.'s conducts are fair use of plaintiff's marks, which are not actionable.

As and for a Seventh Affirmative Defense

141. Plaintiff suffered no damage or injury from Howard Shipping Express Inc.'s conduct.

As and for an Eighth Affirmative Defense

142. Plaintiff's claims are barred by statute of limitations.

As and for a Ninth Affirmative Defense

143. Plaintiff has suffered no legally cognizable damages from any conduct of Howard Shipping Express Inc.

As and for a Tenth Affirmative Defense

144. Plaintiff failed to mitigate their damages.

As and for an Eleventh Affirmative Defense

145. To the extent that plaintiff may have already litigated its claims herein, plaintiff's claims are barred by collateral estoppel and/or res judicata and/or arbitration and award.

As and for a Twelfth Affirmative Defense

146. Plaintiff has failed to join indispensable parties to this action.

As and for a Thirteenth Affirmative Defense

147. No acts or omissions of Howard Shipping Express Inc. proximately caused any injuries and/or damages to plaintiff.

As and for a Fourteenth Affirmative Defense

148. The sole proximate cause or approximate cause of damages alleged to have been suffered by plaintiff was due to either the conduct, fault, omissions and/or negligence of either the plaintiff or defendants other than Howard Shipping Express Inc. .

As and for a Fifteenth Affirmative Defense

149. Court lacks personal jurisdiction over defendant in that Jerry Tran is not an officer or director of Howard Shipping Express Inc. and not authorized to accept service of process.

As and for a Sixteenth Affirmative Defense

150. Plaintiff may not maintain this action as against Howard Shipping Express Inc. due to Doctrine of Waiver.

As and for a Seventeenth Affirmative Defense

151. Plaintiff is estopped from maintaining this action as against Howard due to Doctrine of Unclean Hands.

As and for a Eighteenth Affirmative Defense

152. Plaintiff may not bring this action against Howard Shipping Express Inc. due to Doctrine of Latches, Abandonment, Fair Use, Estoppel and Acquiescence.

As and for a Nineteenth Affirmative Defense

153. Plaintiff failed to use alleged marks on a consistent basis and therefore cannot establish that consumers associated those marks as identifying the source of those products.

As and for a Twentieth Affirmative Defense

154. Plaintiff's marks are not distinctive, generic and/or merely descriptive.

As and for a Twenty-First Affirmative Defense

155. Plaintiff has not defended or protected its marks in question.

As and for a Twenty-Second Affirmative Defense

156. Plaintiff has abandoned certain of said “marks” due to lack of use.

As and for a Twenty-Third Affirmative Defense

157. Third parties and other entities use some or all of plaintiff’s alleged marks and therefore plaintiff’s marks are weak and not likely to cause confusion.

As and for a Twenty-Fourth Affirmative Defense

158. All applicable defenses which have been or will be asserted by other persons or entities in this action are adopted and fully incorporated by reference as if fully set forth herein. In addition, this answering defendant will rely upon any and all further defendants in this action and hereby specifically reserves its right to amend its Answer for the purpose of asserting such additional defenses.

Demand for Jury Trial

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Howard hereby demands a trial by jury on all triable issues.

As and for a First Cross-Claim against Co-Defendant John Does 1 through 10

159. This Court has subject matter jurisdiction of this cross-claim in that this action involves a Federal question.

160. To the extent that any liability is found against this answering defendant Howard Shipping Express Inc., it is entitled to contribution and/or indemnity from any and all presently unidentified co-defendants who are found to have used the package shipping services rendered by Howard Shipping Express Inc. to ship counterfeits, fakes, knock-offs, and/or imitations of plaintiff’s trademarked goods in violation of Federal statutes without Howard Shipping Express Inc.’s knowledge, permission and consent, for any judgment rendered against Howard Shipping Express Inc., and for costs, expenses and reasonable attorneys fees that Howard Shipping Express Inc. is directed to pay by the Court.

WHEREFORE, answering defendant Howard Shipping Express a/k/a Howard Shipping Express Inc., respectfully requests a judgment:

- a. Dismissing the Complaint against Howard Shipping Express a/k/a Howard Shipping Express Inc.;
- b. Denying all the reliefs sought therein against Howard Shipping Express a/k/a Howard Shipping Express Inc.;
- c. Granting the relief sought in Howard Shipping Express a/k/a Howard Shipping Express Inc.'s cross claims; and
- d. Awarding Howard reasonable attorney's fees and costs and such other and further relief as this Court deems just and proper.

DATED: Brooklyn NY
September 27, 2007

S/Andrew Squire
Andrew Squire, Esq. (6696)
Attorney for Defendant
Howard Shipping Express Inc.
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Brooklyn NY 11233
(718) 771 2221